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IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

No. 906

WALTER SCOTT WATSON, *Petitioner,*

vs.

MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY, a Corporation, *Respondent.*

No. 907

KENNETH NICOLL WATSON, *Petitioner,*

vs.

MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY, a Corporation, *Respondent.*

REPLY BRIEF FOR PETITIONERS

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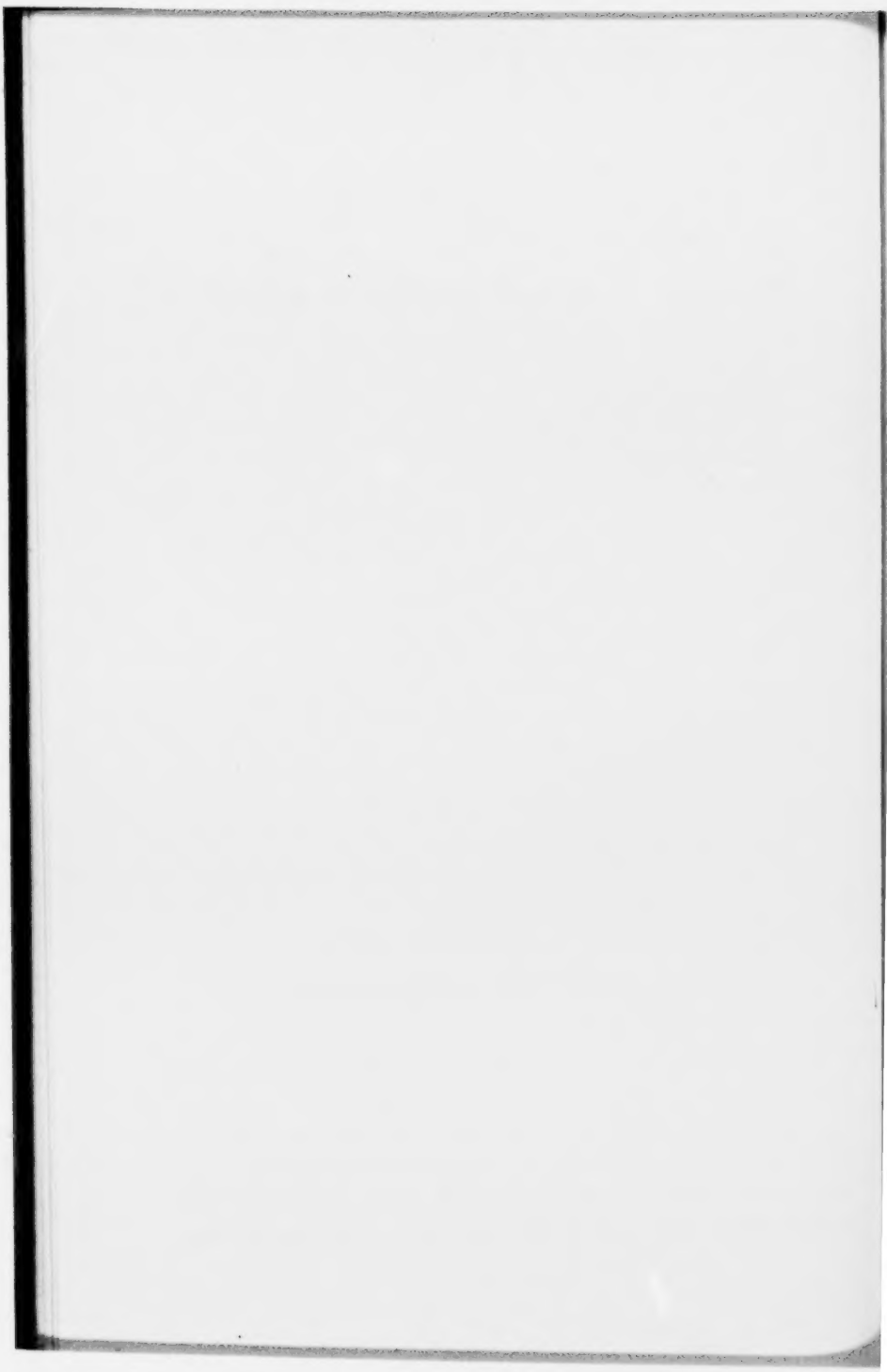

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REPLY BRIEF FOR PETITIONERS

In view of the misleading arguments of respondent we deem it our duty to reply and to point out the basic question here presented. This is *not* a case involving *a meeting of the minds* in the purchase of insurance, *followed by a breach thereafter.* That is the fundamental error into which the courts below were lead by the arguments, that the policies

were "in fact made as collateral security",[1] that respondent's repudiation was "an opinion"[2] and petitioners' cannot recover because the contract was "partially performed".

Here petitioners sought to obtain absolute ownership and control of the policies. Respondent agreed that petitioners should become the owners of the policies, *but knew* that it was not ("never") going to fulfill that agreement and would "never" recognize it. Well knowing it would not give the protection purchased, nevertheless respondent pocketed petitioners' premiums. Years later respondent divulged that it *never* intended to carry out its contract, *as it always considered the policies as collateral only.* Thus petitioners never received *what they paid for,* and when they sought the return of their premiums, respondent says "some" protection might have been received, therefore petitioners can recover nothing. But as respondent *never* furnished *the protection for which petitioners paid* respondent is not entitled to retain petitioners' premiums, and such a repudiation is complete and in no sense "a partial subsequent breach".

Under "Statement of the Case," respondent concedes the facts stated in the Petition, and merely adds that the insurance policies here involved were sought by petitioners to protect an indebtedness (Br. 1-2).

Respondent then states under "Reasons for Denying the Writs," five reasons which it contends prevent this Court from correcting the erroneous decisions of the courts below.

Reply to Respondent's Point I

First respondent corporation says that the writs should be denied because "the amounts involved are small." We

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[1] And this argument is made in face of the conceded fact to the contrary (R. 2, 10).

[2] Concededly "at variance" with respondent's contract (Br. in Opp. p. 4), and "erroneous" (Br. in Opp. p. 8).

say this Court does not close its portals to its citizens because of their lack of financial means or because the amounts in suit are small.

We have searched the Rules of this Court in vain for a provision limiting certiorari to cases involving amounts in excess of those here involved.

Under this section of its brief, respondent boldly states the cases here involve neither a Federal question nor one of general importance, hence the writs should be denied. In view of the numerous authorities, including decisions of this Court, holding the contrary, cited in the Petition (pp. 10-23), we say this contention of respondent is without merit.

Reply to Respondent's Point II

Next, respondent argues the cases were decided in accordance with the law of the District, citing a local decision. But the very next sentence admits that contention may be unsound, because of the *inapplicability* of the cited case to a case which involves an "absolute repudiation" of an insurance policy. To avoid such inconsistency, respondent erroneously argues there was "no repudiation" here. But the conceded facts stated in the Petition show an "absolute repudiation". Thus, petitioners and respondent agreed that petitioners were to obtain absolute assignments of the policies and thereby become the owners thereof (Pet. 3-4). Thereafter, respondent repudiated that agreement and stated that it *never* recognized the original contract and *never* considered the "absolute" assignments as anything but *collateral* (Pet. 4). A more complete repudiation, one which necessarily related back to the inception of the policy, is difficult to conceive.

But this contention is basically unsound and beside the point. Subdivisions (b) and (c) of Sec. 5 of Rule 38 of this Court make "local" decisions of the court below where a

conflict exists, or where they decide questions of "general importance," or where they do not decide a "question of local importance" in accordance with the applicable law, or where they do not give proper effect to decisions of this Court, proper grounds for certiorari.

Reply to Respondent's Point III

Respondent next in substance says that a conceded conflict between the decision below with decisions in the other Circuit Courts of Appeal is not a ground for certiorari. We say such a conceded conflict on the subject of life insurance, a most important part of the trade and commerce between the States and between the States and the District of Columbia, and which relates to the good faith under which the citizen may bargain for a policy of insurance, concerns a question of general importance that ought to be settled by this Court in the public interest. In such a situation in a Federal jurisdiction we submit that the cited decisions are inapplicable.

Reply to Respondent's Point IV

Respondent states that this Court does not have jurisdiction to grant certiorari in these cases as they are not within the jurisdiction of the Federal judiciary. Respondent cites no case in support of such a contention, and we submit none can be found, as the contention is unsound. All cases arising for judicial determination in the District of Columbia arise under the Constitution and Federal laws enacted thereunder and are reviewable on certiorari by this Court.[1]

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[1] See Art. I, Sec. 8, of the Constitution conferring exclusive jurisdiction over the District of Columbia to the United States. As all laws of the District of Columbia arise under this Section of the Constitution, it follows that all laws enacted for the District of Columbia arise under the Constitution of the United States and necessarily are within the jurisdiction of the Federal Judiciary under Article III of the Constitution.

This Court specifically recognizes in Rule 38 (c) that jurisdiction is had by certiorari over the United States Court of Appeals for the District of Columbia. If respondent's position were sound, then this Court has been for more than a hundred years exercising over cases and controversies in the District of Columbia a jurisdiction that was never possessed.

Reply to Respondent's Point V

Finally, respondent concludes by arguing that certiorari should be denied because the judgments below are correct. Such an argument is a curious method of emasculating the Rules of this Court concerning certiorari. Certiorari is not controlled by the assertion of a respondent that the decision below is "correct."

But we take issue with such a contention on the merits. Respondent's argument as set forth on pages 4 through 12 of its brief, is but a continuation and reiteration of the fallacious arguments upon which the *first* opinion below (R. 18) was erroneously based. The court below realized later that such contentions were erroneous and in its second opinion (R. 25-30) completely repudiated its first opinion which was patterned thereon. It is useless to argue a person must pay for "protection" he did not seek, did not purchase, and in fact *never* had, in view of the complete repudiation here involved. As the court below held (R. 28), respondent *has breached its contract* and the breach necessarily related back to the original understanding, showing that the minds of the parties never met. It follows, therefore, that petitioners' Complaints should not have been dismissed and petitioners should have been given "a day in court" to establish the damages sustained by reason of the respondent's known failure to deliver what the petitioners sought. Insurance companies ought not to be permitted to

collect and keep premiums paid under policies they knew were not what the buyers wanted.

CONCLUSION

We do not think the important questions concerning life insurance here involved can be "whistled down the wind" with the casual statement that they are local, unimportant and *cannot* be reviewed by this Court, and, therefore, respectfully submit that the Petition herein should be granted.

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